

**REMARKS**

Applicants respectfully request reconsideration and allowance of the claims, in light of the remarks made herein.

**I. STATUS OF CLAIMS AND FORMAL MATTERS**

Claims 10, 12 and 13 are pending in this application. Claims 10 and 13 are amended. No new matter is added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art, and that these claims are and were in full compliance with the requirements of 35 U.S.C. §112. The amendments of and additions to the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the herewith amendments should not give rise to any estoppel, as the herewith amendments are not narrowing amendments.

**II. THE REJECTION UNDER § 101 IS OVERCOME**

Claim 13 was rejected under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. The rejection is traversed.

The Office Action contends that claim 13 can encompass a host cell comprising a naturally-occurring polynucleotide encoding SEQ ID NO:7. This is incorrect. The language of claim 13 has been modified to clarify that the host cell comprises the isolated polynucleotide of claim 10. If it has been isolated, it cannot be endogenous.

Moreover, the Examiner's attention is directed to 37 C.F.R. § 1.75(c), which states in part: "Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim." Therefore, if the polynucleotide of claim 10 meets the requirements of Section 101, so too must a host cell containing and expressing the polynucleotide of claim 10. The dependent claim cannot be construed to be broader in scope than the independent claim from which it depends.

Reconsideration and withdrawal of the rejection under Section 101 are requested.

**III. THE REJECTION UNDER §112, 2<sup>ND</sup> PARAGRAPH, IS OVERCOME**

Claims 10, 12 and 13 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Claim 10 has been amended to recite "activity", rather than "function." The Examiner is thanked for her suggestion in rectifying this issue. Reconsideration and withdrawal of the indefiniteness rejection are requested.

**CONCLUSION**

In view of the remarks and amendments herewith, it is believed that the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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